



LAW AND SOCIAL POLICY IN THE GLOBAL SOUTH

BRAZIL, CHINA, INDIA, SOUTH AFRICA

Edited by
Ulrike Davy and Albert H.Y. Chen



Law and Social Policy in the Global South

The book is an in-depth study of the origins and the trajectories of the law governing social policies in Brazil, China, India, and South Africa, four middle-income countries in the global South with a history in social policy making that starts in the 1920s.

The policies of these countries affect almost half of the world's population. The book takes the legal framework of the policies as a starting point, but the main interest lies behind the letter of the law: What were the objectives and goals of social policy over the course of the last 100 years? What were the ideas, ideologies, and values pursued by relevant actors? The book comprises four country studies and a comparative study. The country studies concentrate on the political and social context of social policy making in Brazil, China, India, and South Africa as well as on the ideas, ideologies, and values underpinning the constitution, statutory laws, and case law that frame and shape social policy at the national level. The country studies are complemented by a comparative study exploring and describing the commonalities and differences in the ideational approaches to social policies across the four countries, nationally and – in the formative decades – internationally. The comparative study also identifies the characteristics that make Brazilian, Chinese, Indian, and South African social policies distinct from European social policies. With its emphasis on law and drawing on legal scholarship, the book adds a new dimension to the existing accounts on welfare state building, which, so far, are dominated by European narratives and by scholars with a background in sociology, political science, and development studies.

This book is relevant to specialists and peers and will be invaluable to those individuals interested in the fields of comparative and international social security law, human rights law, comparative constitutional law, constitutional history, law and development studies, comparative social policies, global social policies, social work, and welfare state theory.

Ulrike Davy is Professor of Constitutional and Administrative Law, German and International Social Security Law, and Comparative Law at the Faculty of Law, Bielefeld University, Germany, and Visiting Professor of Law at the University of Johannesburg, South Africa.

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Edited by Ulrike Davy
and Albert H.Y. Chen

First published 2023
by Routledge
4 Park Square, Milton Park, Abingdon, Oxon OX14 4RN

and by Routledge
605 Third Avenue, New York, NY 10158

Routledge is an imprint of the Taylor & Francis Group, an informa business

A GlassHouse book

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British Library Cataloguing-in-Publication Data

A catalogue record for this book is available from the British Library

ISBN: 978-1-032-15167-0 (hbk)

ISBN: 978-1-032-15172-4 (pbk)

ISBN: 978-1-003-24282-6 (ebk)

DOI: 10.4324/9781003242826

Typeset in Bembo
by Apex CoVantage, LLC

To all unsung heroes and heroines



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Preface and Acknowledgements

This edited volume is the fruit of years of research collaboration on social policy in the global South, organised under the auspices of the *Zentrum für interdisziplinäre Forschung* (ZiF, or Centre for Interdisciplinary Research), Bielefeld University. Most of the chapters in this volume are revised versions of papers presented at a conference on ‘Understanding Southern Welfare: Social Policies in Brazil, India, China and South Africa’, taking place at the ZiF from 11 through 12 July 2019.

The July 2019 conference was the culmination and concluding event of the activities of the ZiF Research Group on ‘Understanding Southern Welfare: Ideational and Historical Foundations of Social Policies in Brazil, India, China and South Africa’. The Research Group – an international research team – was approved by the ZiF in July 2016 and convened by Ulrike Davy, Faculty of Law, Bielefeld University, and Lutz Leisering, Faculty of Sociology, Bielefeld University, as the heads of the group. Two subgroups were formed under the Research Group – the ‘sociology subgroup’ headed by Lutz Leisering, and the ‘law subgroup’ headed by Ulrike Davy. The contributors to the present volume were members of the ‘law subgroup’.

The members of the Research Group were all invited to stay at the ZiF as Fellows for five months during the period from March through July 2018. Before the Research Group gathered for the longer period of stay at the ZiF, three research workshops on issues that subsequently constituted the main themes of the Research Group had already been held at the ZiF in November 2014, November 2015, and December 2016. The ‘law subgroup’ met additionally in December 2017 to prepare for the activities of the group in the following year.

The ‘residence-phase’ of the Research Group at the ZiF in 2018 was devoted to sessions of intense joint readings and exchange of views among jurists, sociologists, political scientists, historians, and economists who are eminent scholars in the study of social policies in the West and the global South. The participants included the Fellows of the Research Group itself and other scholars invited to visit the ZiF and to participate in the seminars and workshops organised by the Research Group. The ‘law subgroup’ organised two ZiF workshops, one in April 2018 and the other in July 2018, during which valuable inputs

were provided by guest speakers and commentators who were external to the Research Group. The comparative study written in 2020 and 2021 additionally drew on discussions and many insights gained in the context of the Collaborative Research Center (SFB) 1288 on Practices of Comparing, funded by the German Research Foundation (DFG).

We are much indebted to all those who contributed to, participated in, facilitated, funded, provided administrative support for, or otherwise made possible the numerous workshops, seminars, and conferences of the research project of which this volume forms a part. In particular, we take this opportunity to express our gratitude to the following institutions: The ZiF itself, its directors (Michael Röckner, Véronique Zanetti, Philippe Blanchard, Martin Egelhaaf, and Joanna Pfaff-Czarnecka), and Britta Padberg for funding the group and for giving us much encouragement and support; the Faculty of Law, Bielefeld University, for funding a workshop and for sponsoring the publication of this edited volume as an open access publication; the Stellenbosch Institute for Advanced Study, South Africa, and its director Hendrik Geyer for generously providing two fellowships that were crucial for the preparation of our ZiF application.

Our warmest gratitude extends to the ZiF staff – Marina Hoffmann, Trixi Valentin, Mo Tschache, and Daniela Brinkmann – who were always there when needed and did miracles to make things run smoothly, and to Stefan Adamick whose posters for our workshops and conferences were pieces of art, each time.

Maria Virginia Lorena Ossio Bustillos was for more than a year the coordinator of the Research Group, steering us, like a guardian angel, through all sorts of weathers, with wisdom, joyfulness, humour, and admirable insights in the human soul. Lorena could laugh away easily all oddities and difficulties we have encountered and shared during our joint endeavours. We are and remain grateful for her friendship. Thank you very much, Lorena!

We owe a big ‘thank you’ to our fellow Fellows from the ‘sociology subgroup’: Lutz Leisering, Aiqun Hu, Lena Lavinias, Gabriel Ondetti, Sony Pellisery, Jeremy Seekings, Shi-Jiunn Shi, and Marianne Ulriksen. They helped us understand social policies in Europe and the global South from their particular specialisations. They also made us aware of differences in perspectives and approaches. Through the lens of differences and diversity, we could better grasp how we should proceed in describing why and to what extent welfare states emerged and developed in Brazil, China, India, and South Africa, while bearing in mind Europe from a comparative perspective. Although Europe cannot be left out of our narrative, our interest was and is on the ideational foundations of the domestic policies and politics in the four countries as expressed in constitutions, statutory laws, and court adjudication. These developments may at times have been inspired by European models of the welfare state, but not necessarily or always so. Developments at the domestic level also mirror local ideas, values, and preferences. And the domestic level is what we chose to be

the starting point for our common project of understanding Southern welfare, as it took shape historically in Brazil, China, India, and South Africa.

We are also grateful to the scholars who came to the ZiF to share their expertise with us over the years: Ravi Ahuja, Daniel Brinks, Sarah Cook, Benjamin Davy, Vivek Nenmini Dileep, Virgilio Afonso da Silva, Andries du Toit, Eberhard Eichenhofer, Sonia Fleury, Peter Ho, Mingtao Huang, Niraja Gopal Jayal, Evance Kalula, Sandra Liebenberg, Frances Lund, Marcelo Medeiros, Marcus André Melo, James Midgley, Kinglun Ngok, Leila Patel, Shitong Qiao, Prerna Singh, Göran Therborn, Arun Thiruvengadam, André van der Walt, Sue-Mari Viljoen, Yitu Yang, Li Zhang, and Augusto Zimmermann. Their inputs proved invaluable.

And, last but not least, we want to thank our fellow contributors to this volume, who, together with the two of us, constituted the ‘law subgroup’ of the Research Group: Octávio Luiz Motta Ferraz, Letlhokwa George Mpedi, and Sarbani Sen. We have spent many hours together, at ZiF workshops, during our stay at the ZiF as resident Fellows, and via Zoom in preparing for the publication of this edited volume. We cherish all these moments and memories! We also cherish their commitment, dedication, and perseverance. Thank you very much Letlhokwa, Octávio, and Sarbani!

We regard the work of producing this volume to be a labour of love – both as a testimony to the efforts made over the course of many decades of social policy development in the four countries covered by this volume, and as a memorial to the friendship and collegiality that have been built up among the members, friends, and supporting staff of our Research Group during years of sharing and collaboration in research. We hope that this volume can serve as a useful work of reference for scholars and students in the field for years to come.

This book’s dedication to ‘all unsung heroes and heroines’ is inspired by a passage in the judgement of the Constitutional Court of South Africa in *Sylvia Bongi Mahlangu and South African Domestic Service and Allied Workers Union v Minister of Labour and others* ([2020] ZACC 24). The judgement links social policy to ideas of dignity and equality that dominate, time and again, the emergence and the trajectories of social policies in Brazil, China, India, and South Africa.

Ulrike Davy and Albert H.Y. Chen
Co-editors
October 2022

Law and Social Policy in the Global South

Setting the Stage

Ulrike Davy

Background

Scholarly accounts on the emergence and the trajectories of the European welfare states abound, for more than a hundred years.¹ Scholarly interest focuses particularly on the German and the British welfare states. Generally, Germany and Great Britain are deemed forerunners instituting distinct and differing welfare state models that were subsequently promoted at the international level, mainly by the International Labour Organisation (ILO). The forerunner models often served as points of reference for other countries.² Germany and Great Britain have a tradition of poor laws, ie of a legal framework ensuring that people receive help in case they are not able to provide for themselves. The British poor law is often traced back to the beginning of the seventeenth century, when Elizabeth I introduced the first comprehensive system of parish churchwardens and overseers tasked with providing relief for

1 See eg John Graham Brooks, *Compulsory Insurance in Germany* (Rev edn, Government Printing Office 1895); Lee K. Frankel and Miles M. Dawson, *Workingmen's Insurance in Europe* (Russell Sage Foundation 1910); Henry Rogers Seager, *Social Insurance. A Program of Social Reform* (Macmillan Company 1910); I.M. Rubinow, *Studies in Workmen's Insurance: Italy, Russia, Spain* (Dissertation, Columbia University 1911); I.M. Rubinow, *Social Insurance* (Henry Holt and Company 1913); Karl Polanyi, *The Great Transformation* (Beacon Press 1944); T.H. Marshall, 'Citizenship and Social Class' in T.H. Marshall (ed), *Citizenship and Social Class and Other Essays* (Cambridge University Press 1950) 1; Gosta Esping-Andersen, *The Three Worlds of Welfare Capitalism* (Polity Press 1990); Franz-Xaver Kaufmann, *European Foundations of the Welfare State* (Berghahn 2012); Franz-Xaver Kaufmann, *Variations of the Welfare State. Great Britain, Sweden, France and Germany between Capitalism and Socialism* (Springer 2013).

2 For an account on the role of the International Labour Organisation in dispersing the idea of the 'welfare state' see Sandrine Kott, 'Constructing a European Social Model: The Fight for Social Insurance in the Interwar Period' in Jasmien van Daele and others (eds), *ILO Histories: Essays on the International Labour Organization and Its Impact on the World During the Twentieth Century* (Peter Lang 2010) 173; Kaufmann, *European Foundations* (n 1) 97; Gerry Rodgers, 'India, the ILO and the Quest for Social Justice since 1919' (2011) 46 *Economic & Political Weekly* 45, 46; Daniel Maul, *Human Rights, Development and Decolonization. The International Labour Organization 1940–70* (Palgrave 2012).

the poor in 1601.³ The 1601 Act for the Relief of the Poor was an early act of state requiring that towns, parishes, and hamlets support ‘their’ poor.⁴ In the sixteenth and the seventeenth century, Germany still relied mainly on *Bettelverbote* (regulations by the Emperor, territorial rulers, or local authorities prohibiting the begging in the cities and requiring local authorities to expel all non-resident beggars).⁵ The first German statute announcing that providing poor relief was within the responsibilities of the state was the Prussian *Allgemeine Landrecht* of 1794 (ALR).⁶ The ALR also detailed the responsibilities of the local authorities and the requirements for the provision of relief. Yet, the decisive move toward what was later termed the ‘welfare state’ occurred in Germany in the 1880s.⁷ War-torn Great Britain followed suit in the early 1940s, after some experimenting at the beginning of the twentieth century,⁸

3 See eg George Nicholls, *A History of the English Poor Law in Connexion with the Legislation and other Circumstances Affecting the Condition of the People*, vol 1 (John Murray 1854) 192; Anthony I. Ogus, ‘Landesbericht Großbritannien’ in Peter A. Köhler and Hans F. Zacher (eds), *Ein Jahrhundert Sozialversicherung in der Bundesrepublik Deutschland, Frankreich, Großbritannien, Österreich und der Schweiz* (Duncker & Humblot 1981) 269, 276, 294; Derek Fraser, *The Evolution of the British Welfare State. A History of Social Policy since the Industrial Revolution* (2nd edn, Macmillan 1984) 31; Ulrike Davy, Chapter 6 in this volume, p. 190. Earlier poor relief acts were more piecemeal, less systematic. The Elizabethan poor law was superseded by a major poor law reform in 1834. For details on the Poor Law Amendment Act of 1834 see Sidney Webb and Beatrice Webb, *English Local Government: English Poor Law History: Part II. The Last Hundred Years*, vol 1 (Longmans, Green and Co. 1929) 90.

4 Nicolls (n 3) 197.

5 The rules prohibiting the begging in the cities and communes were part and parcel of the various (imperial, territorial, or local) *Policeyordnungen* (decrees making provision for a good public order) of the sixteenth and seventeenth century. The decrees regularly emphasised that non-resident beggars as well as able-bodied resident beggars ought not to be tolerated in the cities. Rather in passing, the decrees referred to the cities and communes as the pertinent local authorities carrying some responsibilities for ‘their’ poor. When implementing these responsibilities, the cities and communes relied on the willingness of their (wealthy) burghers to provide the means (alms) necessary to implement these responsibilities; providing a framework for giving alms was the traditional realm of the Church. The responsibilities of the Church and the responsibilities of the secular authorities were still quite closely entwined. On the legal framework of *Fürsorge* (welfare relief) in early modern Germany see Karl Otto Scherner, ‘Das Recht der Armen und Bettler im Ancien régime’ (1979) 96 *Savigny-Zeitschrift*, Germanistische Abteilung 55.

6 *Allgemeines Landrecht für die Preussischen Staaten* (General Laws Applicable in the Prussian States), 1 June 1794 <<https://opiniojuris.de/quelle/1621>> accessed 28 February 2022. ALR, II 19 § 1 read: ‘It is incumbent on the state to provide food and care for those citizens who cannot provide for themselves, and who do not receive aid from other private persons who are obliged by law to do so’ (translation by the author).

7 See eg Detlev Zöllner, ‘Landesbericht Deutschland’ in Peter A. Köhler and Hans F. Zacher (eds), *Ein Jahrhundert Sozialversicherung in der Bundesrepublik Deutschland, Frankreich, Großbritannien, Österreich und der Schweiz* (Duncker & Humblot 1981) 83.

8 David Gladstone, ‘The Welfare State and the State of Welfare’ in David Gladstone (ed), *British Social Welfare. Past, Presence, Future* (UCL Press 1995) 1, 2; John Stewart, ‘The Twentieth Century: An Overview’ in Robert M. Page and Richard Silburn (eds), *British Social Welfare in the Twentieth Century* (Macmillan 1995) 15, 17.

subsequently to the release of the Beveridge report.⁹ The German model, created by a series of (social) insurance laws relating to health, industrial accidents, and old age, is often classified as ‘conservative’,¹⁰ as the German system of (income replacing) benefits mirrors the economic hierarchies established through the market forces, some redistributive features of the system notwithstanding: The ones who fare better in the labour market pay higher contributions and receive higher benefits; women and children are conceived of as recipients of benefits based on dependency. By contrast, following the Beveridge report, Great Britain institutionalised a ‘liberal’ welfare state,¹¹ ie a welfare state showing only restrained ambition to balance fate, risks, or the market forces. One of the main principles underpinning the social policies introduced in Great Britain in the 1940s was that social security ought to be achieved by the ‘co-operation between the State and the individual’.¹² State responsibility was conceptualised as being limited to some sort of defined minimum and, consequently, social policies were supposed to leave ‘room and encouragement for voluntary action by each individual to provide more than that minimum’.¹³ In short, German policy makers were concerned with finding peace with the labour movement.¹⁴ British policy makers were concerned with fighting want.¹⁵ Even though the original intentions faded into the background later or were supplanted by other intentions, the original intentions still dominate scholarly classifications.

More recently, scholarly attention has turned to the social policies in the global South, in particular in political science, sociology, development studies, and economy.¹⁶ Attention grew in the 1990s and the 2000s, when some countries in the global South started to introduce social policy measures that

9 William Beveridge, *Social Insurance and Allied Services. Report* (Cmd 6404, 1942).

10 Esping-Andersen (n 1) 27, 53.

11 Esping-Andersen (n 1) 26, 48; Stewart (n 8) 19.

12 Beveridge (n 9) para 9.

13 *ibid.*

14 Lutz Leisering, ‘The Welfare State in Postwar Germany’ in B. Vivekanandan and Nimmi Kurian (eds), *Welfare States and the Future* (Palgrave Macmillan 2005) 113.

15 Beveridge (n 9) para 11.

16 For an overview see Lutz Leisering, Benjamin Davy, and Ulrike Davy, ‘The Politics of Recognition: Changing Understandings of Human Rights, Social Development and Land Rights as Normative Foundation of Global Social Policy’ (2014) 18 *Max Planck YB of UN Law* 565; see also Carina Schmitt, ‘External Actors and Social Protection in the Global South: An Overview’ in Carina Schmitt (ed), *From Colonialism to International Aid External Actors and Social Protection in the Global South* (Palgrave Macmillan & Springer Nature Switzerland 2020) 3; Christian Aspalter, ‘Introduction’ in Christian Aspalter (ed), *The Routledge International Handbook to Welfare State Systems* (Routledge 2017) 1. The term ‘global South’ is contested and not clearly defined, and it has more than geographical implications. For a critical stance see eg Nour Dados and Raewyn Connell, ‘The Global South’ (2012) 11 *Contexts* 12. Here, the term is used to refer to so-called low- and middle-income countries (according to United Nations parlance) and the term implies a history of colonisation.

were seen as novel and innovative, at times as politically overdue.¹⁷ The introduction of cash transfers, tied to certain duties relating to school attendance, health, or work (so-called conditional cash transfers, according to the terminology used by the World Bank) or not so tied and generally means-tested, absorbed most of the attention. The first comparative studies appeared in the 2000s, but studies comparing countries in the global South or Southern and Northern welfare are still rare, even in political science, sociology, or development studies.¹⁸ Most existing comparative efforts strive to adjust concepts, models, or classifications capturing European welfare regimes so that they also capture Southern social policies, or tend to suggest new taxonomies or welfare models.¹⁹

Aims

This book takes a different approach. For one, all contributors are legal scholars. The legal approach pursued in this book adds a distinct and new perspective to the existing literature: We aim to enhance the understanding of the social policies in four, and thus a limited number of, countries in the

- 17 See eg Anis A. Dani and Arjan de Haan (eds), *Inclusive States. Social Policy and Structural Inequalities* (The World Bank 2008); James Midgley and Kwong-leung Tang (eds), *Social Policy and Poverty in East Asia* (Routledge 2010); James Midgley and Mitsuhiro Hosaka (eds), *Grassroots Social Security in Asia* (Routledge 2011); Ingrid Wehr, Bernhard Leubolt, and Wolfram Schaffar (eds), *Welfare Regimes in the Global South* (Mandelbaum 2012); Katja Bender, Markus Kaltenborn, and Christian Pfeiderer (eds), *Social Protection in Developing Countries. Reforming Systems* (Routledge 2013); Rebecca Surennder and Robert Walker (eds), *Social Policy in a Developing World* (Edward Elgar 2013); Khayaat Fakier and Ellen Ehmke (eds), *Socio-Economic Insecurity in Emerging Economies* (Routledge 2014).
- 18 See eg Ian Gough and Geof Wood, *Insecurity and Welfare Regimes in Asia, Africa and Latin America* (Cambridge University Press 2004); Jeremy Seekings, 'Welfare Regimes and Redistribution in the South' in Ian Shapiro, Peter A Swenson, and Daniela Donna (eds), *Divide and Deal. The Politics of Distribution in Democracies* (New York University Press 2008); OECD, *Tackling Inequalities in Brazil, China, India and South Africa. The Role of the Labour Market and Social Policies* (OECD Publishing 2010); Miguel Niño-Zarazúa, Armando Barrientos, Samuel Hickey, and David Hulme, 'Social Protection in Sub-Saharan Africa: Getting the Politics Right' (2012) 40 *World Development* 163; Jeremy Seekings, 'Pathways to Redistribution. The Emerging Politics of Social Assistance across the Global "South"' in Ingrid Wehr, Bernhard Leubolt, and Wolfram Schaffar (eds), *Welfare Regimes in the Global South* (Mandelbaum 2012) 14; James Midgley and David Piachaud (eds), *Social Protection, Economic Growth and Social Change. Goals, Issues and Trajectories in China, India, Brazil and South Africa* (Edward Elgar 2013). More recently and comprehensively Lutz Leisering, *The Global Rise of Social Cash Transfers: How States and International Organizations Constructed a New Instrument for Combating Poverty* (Oxford University Press 2018).
- 19 For an overview see Rianne Mahon, 'Rethinking Welfare Regimes: Challenges from the South' (2018) Centre for Social Science Research Working Paper No. 148 <www.ccsr.uct.ac.za/sites/default/files/image_tool/images/256/Publications/Mahon-wp418.pdf> accessed 28 February 2022. Focusing on the role of global actors Moritz von Gliszczynski and Lutz Leisering, 'Constructing New Global Models of Social Security: How International Organizations Defined the Field of Social Cash Transfers in the 2000s' (2016) 45 *Journal of Social Policy* 325.

global South – Brazil, China, India, and South Africa – from the particular angle of law.²⁰

Secondly, and because the emphasis is on ‘understanding’, the book is not conceptualised as a doctrinal effort elaborating on the content of the various statutory laws that combine to what could be termed ‘social security law’. Our main interest lies beyond the letter of the law. The book seeks to understand the law in its political and social context: We investigate the ideational foundations of the law relating to the social policies in the countries involved. With putting our emphasis on ideational processes and their outcomes, we follow a recent branch in social policy research that stresses the particular relevance of ‘ideas’ for explaining the emergence of social policies and, hence, welfare states, European and non-European alike.²¹ The notion of ‘ideas’ is deliberately kept broad, capturing ideologies, concepts, values, beliefs, or perceptions by actors as they make their arguments or claims with regard to certain policy issues.²² Obviously, ideas may impact policy making at various levels of abstraction: Ideas may influence the very construction of what the problem is and, therefore, influence the setting of an agenda (low wages may be conceived of as a symbol of class struggle or the result of market forces). Ideas may influence the choice of policy instruments (eg benefits in kind or cash benefits). And ideas may determine need for reform (eg perceived changing family patterns).²³ While social policy literature is much concerned with how to prove the specific impact of ideas (causality) – for example, vis-à-vis power structures or institutions – our ambition and task is different.

20 Starting from a similar point of departure, but from a sociological and political science perspective, see the contributions of the Fellows of our twin ZiF-project in Lutz Leisering (ed), *One Hundred Years of Social Protection. The Changing Social Question in Brazil, India, China, and South Africa* (Palgrave Macmillan 2021).

21 See eg Daniel Béland and Randall Hansen, ‘Reforming the French Welfare State: Solidarity, Social Exclusion and the Three Crises of Citizenship’ (2000) 23 *West European Politics* 47; Craig Parsons, ‘Showing Ideas as Causes: The Origins of the European Union’ (2002) 56 *International Organization* 47; Birgit Pfau-Effinger, ‘Culture and Welfare State Policies: Reflections on a Complex Interrelation’ (2005) 34 *Journal of Social Policy* 3; Daniel Béland, ‘Ideas and Social Policy: An Institutional Perspective’ (2005) 39 *Social Policy & Administration* 1; Wim van Oorschot, ‘Culture and Social Policy: A Developing Field of Study’ (2007) 16 *International Journal of Social Welfare* 129; Daniel Béland, ‘Ideas, Institutions, and Policy Change’ (2009) 16 *Journal of European Public Policy* 701; Daniel Béland, ‘Ideas and Institutions in Social Policy Research’ (2016) 56 *Social Policy & Administration* 734; Privilege Haang’andu and Daniel Béland, ‘Transnational Actors and the Diffusion of Social Policies: An Ideational Approach’ in Carina Schmitt (ed), *From Colonialism to International Aid External Actors and Social Protection in the Global South* (Palgrave Macmillan & Springer Nature 2020).

22 Béland, ‘Ideas and Institutions’ (n 21) 736–738.

23 On conceptualising social policy ideas see also Lutz Leisering, ‘Social Protection in the Global South. An Ideational and Historical Approach’ in Lutz Leisering (ed), *One Hundred Years of Social Protection. The Changing Social Question in Brazil, India, China, and South Africa* (Palgrave Macmillan 2021) 3, 22.

We want to develop narratives, ie accounts of events relating to the social policies occurring in Brazil, China, India, and South Africa, that equal the well-known narratives linked to Western welfare states, in particular Western European welfare states.²⁴ The ‘ideas’ we will be dealing with derive from constitutional rights and values, the legal framework for social benefits and, when and where existent, relevant case-law.

Thirdly, we combine the ideational approach with a historical approach. Goals, objectives, and values of actors, and the perception of problems evolve over time, change over time, and may create (sometimes unforeseen or unexpected) path-dependencies. Elements of former social policies may become so entrenched that policy makers are barely able to effectively opt for a change.²⁵ Of course, history has to start somewhere. The timeline underlying our book generally starts in the 1920s, a decade that marks the emergence of social policies in all countries involved. The timeline ends at the present. Thus, the book gives an in-depth account, from a legal, ideational, and historical point of view, of the emergence and the development of social policies in Brazil, China, India, and South Africa.

Finally, based on comparisons across the four countries and in relation to social policies in Europe (Germany, Great Britain), the book contributes to welfare state theory which has so far mainly drawn on European history. The book is not about adapting the concepts or models relating to European welfare regimes in order to somehow integrate the developments originating in the global South. The book is about giving an account on how social policies emerged in four countries in the global South and how these countries subsequently developed their own pathways, even though links to European social policies were always close and the colonial pasts always present. But European social policies are seen as the periphery, while the social policies in Brazil, China, India, and South Africa are in the forefront.

Countries

Brazil, China, India, and South Africa have, for a number of reasons, been chosen to be the probing grounds for exploring the social policies in countries in the global South. The four countries are significant in terms of the size of the population. The social policies of the four countries affect almost half of the world’s population. The four countries are significant from the perspective of economic development. China, India, and Brazil are among

24 For a European perspective see Jens Alber, *Vom Armenhaus zum Wohlfahrtsstaat. Analysen zur Entwicklung der Sozialversicherung in Westeuropa* (Campus Verlag 1982); Kaufmann, *European Foundations* (n 1); Michael Stolleis, ‘The European Welfare State. A Model under Threat’ (2017) 46 *Quaderni Fiorentini* 17.

25 See eg Paul Pierson, ‘The New Politics of the Welfare State’ (1996) 48 *World Politics* 143, 175.

the twelve largest economies in the world; South Africa is among the economically most advanced countries in Africa.²⁶ Economic growth indicates the availability of resources and institutions that might stimulate social policies. The four countries are significant from the perspective of social policy trajectories. The countries have – tentative and *ad hoc* as this may have been at first – a history of social policies that reaches back to the 1920s and 1930s.²⁷ Among the countries in the global South, they were among the first to introduce social policies, broadly understood as state action (reflected in the constitution, statutes, regulations, judgements, doctrine, or policy papers) meant to meet the needs of people relating to economic security, social security, work, housing, food, clothing, health, or education.²⁸ And in the 2000s, some of the social policy instruments introduced in Brazil, China, India, or South Africa have become role models for other countries in the global South. Most famously, conditional cash transfers spreading in the global South often emulate the Brazilian *Programa Bolsa Família*.²⁹ The Indian 2005 National Rural Employment Guarantee Act was remodelled in South Africa under the terms of the Community Work Programme.³⁰ Also, constitutional frameworks align. In all four countries, today's constitutions enshrine socio-economic individual rights, the differences in their constitutional histories and in the interpretation of those rights notwithstanding. In Brazil, India, and South Africa – China has no comparable institutional system – courts are willing to adjudicate in matters governed by constitutionally embedded

26 World Bank national accounts data, GDP (current US\$) 2020.

27 On early social policies in Brazil see A. Tixier, 'The Development of Social Insurance in Argentina, Brazil, Chile, and Uruguay' (1935) 32 *International Labour Review* 610 (part 1) and 751 (part 2); Paula Lopes, 'Social Problems and Legislation in Brazil' (1941) 44 *International Labour Review* 493. On India see Rajani Kanta Das, 'Labour Legislation in India' (1930) 22 *International Labour Review* 599; Atul C. Chatterjee, 'Federalism and Labour Legislation' (1944) 49 *International Labour Review* 415. On China see the early account by John Dixon, *The Chinese Welfare System 1949–1979* (Praeger Publishers 1981). And on the policies of the Union of South Africa enacted by a National Party–Labour Party coalition government see Jeremy Seekings, "'Not a Single White Person Should be Allowed to Go under'". *Swartgevaar* and the Origins of South Africa's Welfare State, 1924–1929' (2007) 48 *Journal of African History* 375.

28 Stephan Haggard and Robert R. Kaufman, *Development, Democracy, and Welfare States. Latin America, East Asia, and Eastern Europe* (Princeton University Press 2008) 3 stress the economic dimension of social policy, holding that 'social policy' is primarily about 'how governments choose to redistribute income, either through insurance schemes that mitigate risk or through spending on basic social services that are of particular significance to the poor'. Bent Greve, 'What is Welfare and Public Welfare?' in Bent Greve (ed), *Routledge Handbook of the Welfare State*, 2nd edn (Routledge 2019) 4 also stresses 'well-being' and the understanding of what 'a good society' means.

29 On the rise of social cash transfers see eg Armando Barrientos, 'Social Protection and Poverty' (2011) 20 *International Journal of Social Welfare* 240; Rachel Slater, 'Cash Transfers, Social Protection and Poverty Reduction' (2011) 20 *International Journal of Social Welfare* 250; Leisering (n 18) 139.

30 Khayaat Fakier, 'The Community Work Programme and Care in South Africa' in Fakier and Ehmke (n 17).

socio-economic rights and values.³¹ And the four countries have become global players, a status that is epitomised by their being part of a loose network linking Brazil, Russia, India, China, and South Africa (BRICS) and by their role in advancing South-South cooperation.³²

Against the backdrop of our aim – understanding the social policies and law developed in Brazil, India, China, and South Africa from their very start – we have to be selective with regard to the social policies we cover, and, given space limitations, we have to refrain from going into the specifics and intricacies of the various legal frameworks. We will focus on certain core fields of social policies.

For one, we focus on social insurance, ie contribution-based systems providing benefits in the case of certain risks or contingencies, such as industrial accidents, spells of ill-health, unemployment, or old age. These benefits aim primarily to replace (individual) income loss when one or more contingencies materialise.³³ For another, we focus on tax-financed (often) means-tested benefits addressing basic needs, in particular the need for food, clothing, housing, water, and health care. At the national level, tax-financed and means-tested benefits addressing basic needs come under a plethora of terms. Some benefits take the form of cash transfers: In Germany, the cash transfers are called *Sozialhilfe* (social assistance) or *Grundsicherung für Arbeitsuchende* (basic security for jobseekers), in France they are called *aide sociale* (social assistance), and in the United Kingdom they come under the general term ‘income-related benefits’, a term that covers income support, housing benefit, or family credit, to name but a few. In Brazil, the cash transfers are called ‘*bolsa família*’, and the recipients must comply with certain requirements regarding school attendance or health checks (conditional cash transfers). China introduced a ‘Minimum Livelihood Guarantee’ in major cities in the 1990s. The ‘Guarantee’ was later expanded to other areas. In India, the National Social Assistance Programme encompasses an ‘old age pension scheme’, a ‘family benefit scheme’, and a ‘disability pension scheme’. In South Africa, lawmakers used the term ‘pension’ when they introduced a means-tested old age cash transfer for the first time in 1928³⁴ and in 1936, when they introduced a means-tested cash transfer payable to blind persons.³⁵ Later, South African lawmakers preferred to use the term ‘grants’. In 1946, a disability grant was introduced.³⁶ Nowadays, the 2004 Social Assistance

31 Generally, Varun Gauri and Daniel M. Brinks (eds), *Courting Social Justice. Judicial Enforcement of Social and Economic Rights in the Developing World* (Cambridge University Press 2008).

32 Lucia Scaffardi, ‘BRICS – A Multi-Centre Legal Network’ (2014) 5 *Beijing Law Review* 140; Rumu Sarkar, ‘Trends in Global Finance. The New Development (BRICS) Bank’ 2016 13 *Loyola University Chicago International Law Review* 89.

33 For an early conceptualisation of ‘social insurance’ see Rubinow, *Social Insurance* (n 1) 8.

34 Act 22 of 1928.

35 Act 11 of 1936.

36 Act 36 of 1946.

Act³⁷ provides for several ‘social grants’, including child support grants, disability grants, and older persons’ grants. Benefits covering basic needs may also take the form of in-kind benefits, such as school meals, nutritional supplements, the free provision of water or electricity, shelters, or health care. Some of the in-kind schemes operate in times of emergency only (famine relief), some operate longer term (school meals). Finally, some benefits are meant to cover all basic needs, either in cash or in kind, some benefits aim at covering specified needs only (mobility allowances, food allowances, housing benefits). Whatever their name at the national level, all these non-contributory benefits are generally included in our study. Thus, the book’s quest – understanding the social policies in Brazil, China, India, and South Africa – relies on the main pillars of what is, at the international level, often termed ‘social security’.³⁸

Comparing

The centre pieces of any comparative research in law are country studies. Our book presents four such country studies. Clearly, we shall not be able to fully understand ‘Southern welfare’, once we have come to understand the social policies in Brazil, China, India, and South Africa. Four country studies are too scarce a basis for valid generalisations. Still, our comparative endeavour promises to bear fruit.

In order to keep European concepts and models at the periphery, we opted for a country study format that presents national policies and their historical narratives strictly from the perspective of the ‘inside’, using vocabulary and concepts prevailing at the respective national levels. That does not mean that European concepts and models will be absent from our country studies. On the contrary, European concepts and models were indeed present at the national levels and often quite influential. We just look at those concepts and models from a Southern perspective. Presenting four country studies in such a manner challenges the reader. The various national narratives avoid using concepts or terminologies known in international or Western contexts, such as ‘social protection’, ‘social assistance’, or ‘social rights’. Such terms are often loosely defined. Equally often, the terms gloss over national peculiarities and, hence, lack substance at the national level because they fail to grasp the relevant local meaning. Also, legal comparisons across countries are, in any case, delicate. To be meaningful, comparative studies across countries require that, to some extent, the countries share relevant characteristics. Otherwise, comparisons

³⁷ Act 13 of 2004.

³⁸ For the language used in human rights law see Ulrike Davy, ‘How Human Rights Shape Social Citizenship: On Citizenship and the Understanding of Economic and Social Rights’ (2014) 13 Washington University Global Studies Law Review 201. On the notion of ‘social security’ more generally Ulrike Davy, Chapter 6 in this volume, p. 203.

will fail because workable *tertia comparationis* cannot be identified (lack of comparability). And there must also be room for variation across the countries. Otherwise, differences and similarities cannot be identified and explained.

In our case, similar economic parameters (all countries involved are middle-income countries), a tradition in written constitutions sketching the outlook of social policies, a tradition of statutory law and government practices that concretise social policies, and – with respect to Brazil, India, and South Africa – relevant case-law secure basic comparability. In addition to that, social policies were, in each of the countries involved, informed by ideas originating in Western countries and by the policies of the ILO. That, again, secures basic comparability. Western and international influence was, however, limited. The social policies introduced in Brazil, China, India, and South Africa remained fragmented for decades and different for urban and rural populations. In South Africa, social policies also followed (perceived) racial lines. Expansion and universalisation of social benefits is a recent phenomenon; informality is still widespread. The difference to European social policies is huge. Lastly, and from a more formal angle, the country studies are similar in their structure. The studies proceed according to pertinent historical periods and thus present a narrative that captures the emergence of social policies as well as the trajectories taken over time. Similarities in structure broaden the ground for reliable cross-country comparisons.

On the other hand, the countries differ in important respects. The countries differ in their political histories. China's history involves left-wing authoritarianism that opened up to marketisation in the late 1970s. Brazil has a history of shifting between right-wing authoritarianism and democracy. South Africa has a long history of racial discrimination and apartheid. India has a history of almost uninterrupted democracy. Colonial histories differ too: In China, colonialism was confined to specified spheres of influence, dominated by Great Britain, France, other Western powers, and Japan. Brazil and South Africa were settler colonies, yet Brazil's independence dates to 1822, whereas South Africa was governed by a racist White minority until the beginning of the 1990s. India was subjugated first to indirect rule, then to direct rule. Last but not least, social policies differ: In Brazil and China, social policies now rely on a strong state engagement. However, Brazil has turned to democracy in 1988, whereas China continues to adhere to authoritarianism. In India, state intervention was marginal, until recently. In South Africa, social policies bear the burden and (to some extent) the markers of apartheid. All this provides fertile ground for comparison.

Analytically, our comparative efforts involve two steps. For one, we engage in comparisons across the four countries. We shall seek for commonalities and differences and try to explain the occurrence of similar or divergent pathways of social policies. For another, we engage in South–North comparisons: The four countries drew on European social policy models, in particular the German and the British welfare state model, which were – at some points

in time – propagated by the ILO. When it comes to South–North comparisons, we are, nonetheless, not so much interested in commonalities. We rather want to find out whether the social policies in the four countries share some pertinent features – regarding the emergence of the policies or the trajectories taken – that differ from the European models and concepts. Thus, the outcomes of our South–North comparisons contribute to complementing European narratives on the emergence and the trajectories of welfare states and to welfare state theory more generally.

Four Welfare States

According to a widely used definition of the ‘welfare state’, the welfare state ‘is the institutional outcome of the assumption by a society of legal and therefore formal and explicit responsibility for the basic well-being of all of its members’.³⁹ Such a ‘welfare state’ emerges when a society becomes convinced that the welfare of the individual is too important to be left to custom or to informal arrangements and private understandings, or the market forces, and is therefore a concern of government.⁴⁰ This definition of the welfare state stresses three elements: First, the assumption of ‘state responsibility’; second, the formal – eg legal – recognition of such a responsibility; and, third, individual welfare as the object of that responsibility, as opposed to general welfare or community welfare achieved through measures of public health, public infrastructure, public schools, a common defence, or a police force with the mandate to prevent crimes.

Under that broad definition Brazil, China, India, and South Africa undoubtedly qualify as welfare states, and they do so for a few decades. The first Brazilian constitution containing a whole ‘title’ with respect to ‘the economic and social order’ was the Constitution of the United States of Brazil of 1946,⁴¹ promising, *inter alia*, ‘work that enables a dignified existence’ (Article 145) and ‘labour and social security legislation’, ensuring, for instance, medical and sanitary aid for the worker, assistance to the unemployed, and social security against the consequences of old age, invalidity, illness, or death (Article 157). The 1946 Constitution of the Republic of China⁴² contained a chapter on ‘fundamental national policies’, including a part on ‘social security’ listing a number of state duties, among them the duty of the state to ‘provide opportunity of employment to people who are capable of work’ (Article 153) and the duty of the

39 Harry K. Girvetz, ‘Welfare State’ in David L. Sills (ed), *International Encyclopedia of the Social Sciences*, vol 16 (The Macmillan Company & The Free Press 1968) 512. See also Johanna Kuhlmann, ‘What is a Welfare State?’ in Bent Greve (ed), *Routledge Handbook of the Welfare State* (Routledge 2019).

40 *ibid.*

41 Heinonline, World Constitutions Illustrated <www.heinonline.org/HOL/Page?handle=hein.cow/zzbr0379&collection=cow> accessed 28 February 2022.

42 Amos J. Peaslee (ed), *Constitutions of Nations, vol I Afghanistan to Finland* (Rumford Press 1950) 445.

state to ‘enforce a Social Insurance System’ in order to promote social welfare (Article 155, first sentence).⁴³ In a similar vein, the 1954 Constitution of the People’s Republic of China⁴⁴ – envisioning a ‘happy socialist society’ – declared in Article 93:

Working people . . . have the right to material assistance in old age, and in case of illness or disability. To guarantee enjoyment of this right, the state provides social insurance, social assistance and public health services and gradually expands these facilities.⁴⁵

The Indian Constitution, adopted in 1949,⁴⁶ proclaimed to institute a ‘Sovereign Democratic Republic’ and promised in its preamble to assure the dignity of the individual (alongside with the unity of the nation). Moreover, the Indian Constitution declared that ‘untouchability’ be abolished (Article 17), forced labour prohibited (Article 23), and that, in the governance of the country, it be ‘the duty of the State’ to apply certain principles, such as the principle to ‘promote the welfare of the people’ (Article 38) or to direct its policy towards ‘securing . . . that the citizens, men and women equally, have the right to an adequate means of livelihood’ (Article 39[a]), implying the duty, ‘within the limits of its economic capacity and development’, to ‘make effective provision for securing the right . . . to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want’ (Article 41). The current South African Constitution adopted in 1996⁴⁷ includes a ‘Bill of Rights’ guaranteeing traditional freedoms (for instance regarding religion, belief, expression, assembly, association, security of person), political rights, a right to property and equality before the law, but also the right to have human dignity respected and protected, the right to have access to adequate housing, health care, food, water, and social security, so-called socio-economic rights.⁴⁸ While it

43 The second sentence of Article 155 promised: ‘To the aged, the infirm, and the crippled among the people who are unable to earn a living, and to victims of unusual calamities, the State shall extend appropriate assistance and relief’.

44 Albert P. Baustein (ed), *Fundamental Legal Documents of Communist China* (Fred B Rothman & Co 1962) 1.

45 *ibid* 30.

46 Amos J. Peaslee (ed), *Constitutions of Nations, vol II France to New Zealand*, 2nd edn (Martinus Nijhoff 1956) 223.

47 Act No 108 of 1996.

48 The Constitution of South Africa 1961 was very different. For the text see Amos J. Peaslee and Dorothy Peaslee Xydis, *Constitutions of Nations, vol I Africa*, 3rd edn (Martinus Nijhoff 1965) 808. On the one hand, the preamble of the Constitution 1961 promised that its aim was, *inter alia*, ‘to further the contentment and spiritual and material welfare of all in our midst’. On the other hand, the preamble called on the ‘Almighty God’, ‘Who gathered our forebears together from many lands and gave them this their own’, an imaginary that left no doubt that the ‘we’-group claiming to have forebears (‘our forebears’) and a country handed over by God (‘our country’) did not include

is unclear whether the Brazilian, Chinese, or Indian Constitution-makers of the 1940s drew on some concept of 'individual' or 'subjective' rights and, if so, what exactly that concept implied, it is sufficiently clear that all these constitutions and the current South African Constitution imagine a state bearing responsibility with regard to individual welfare, all explicit or implicit limitations to that responsibility notwithstanding. The 'state' is omnipresent as an institution that is meant to intervene in the course of things or societal relations, and old age, illness, invalidity or disability, or unemployment are risks occurring on the individual level.⁴⁹

Summary

The subsequent four chapters will give a more detailed picture of the various shapes of the welfare state established in Brazil, China, India, and South Africa, concentrating on the ideas and goals that informed these shapes. The chapters follow a timeline that harmonises with the history of the country. For all periods deemed relevant, the chapters provide general information on the social, economic, and political context of legal the developments, move to elaborate on the provisions framing social policies more generally, and then turn to the measures we specifically focus on, social insurance and tax-financed means-tested benefits covering basic needs. The chapters trace the influence of international actors, for instance, the ILO, and of foreign models. A final chapter offers comparative perspectives.

Chapter 2 gives an account on the evolution of social policies in Brazil. Octávio Luiz Motta Ferraz starts the account in the 1930s and ends at present times. Ferraz aims to identify the main causes that led to the legal entrenchment of such policies. His focus is on social policies entrenched in the various Brazilian constitutions and some infra-constitutional developments, such as the Family Grant programme (*bolsa família*). The account on legislative acts is followed by an account concentrating on the most often mentioned causes, including ideas, behind the development of social policy legislation in Brazil during the periods covered. Finally, Ferraz comments on the reality of social policies on the ground and shows that and how realities differ, by some margin, from the legal texts. Yet, Ferraz also argues that, the realities notwithstanding, legal developments have made a non-trivial difference to the well-being of the Brazilian people.

people with local forebears. The constitution did not guarantee individual freedoms or individual rights. Equality was mentioned only in the context of languages. Article 108(1) read: 'English and Afrikaans shall be the official languages of the Republic, and shall be treated on a footing of equality, and possess and enjoy equal freedom, rights and privileges'. Against that background, the commitment to the 'welfare of all in our midst' is very thin and exclusive. The reluctance of the constitution was indicative. The governing White minority preferred a marginal welfare state at best.

49 On state responsibility see also Ulrike Davy, Chapter 6 in this volume, p. 198.

Chapter 3 discusses the social policies in China. Albert H.Y. Chen touches upon the Confucian values and practices of the traditional imperial state relating to care for the most unfortunate members of society and then investigates developments in the Republican period (1911–1949), the Maoist era (1949–1977), and the reform era (1978–) of the People's Republic of China (PRC). Chen highlights the changing thinking and institutions relating to social policy, from the enactment shortly after the PRC's establishment of the Labour Insurance Regulations (1951) (the key legal instrument in this domain in the Maoist era), to the constitutional amendment of 2004 (which expressly provides for the state's responsibility for 'social security') and the making of the Social Insurance Law 2010 (which establishes the legal framework for a comprehensive and universally applicable system of social insurance). The opening and reform period, so it seems, triggered an unprecedented expansion in both the field of social insurance and the field of tax-financed means-tested benefits covering basic needs.

Chapter 4 turns to India. Sarbani Sen describes the emergence of social policies in colonial India under British rule, when the first pertinent laws were enacted, the reaction of nationalist leaders to such policies, and the values and goals behind their own articulation of social policy which culminated in the drafting of the Indian Constitution, especially Part IV (the Directive Principles). These Principles were intended to be guidelines to the state about its approach to problems of workers, lower castes, women, and children, among other groups, and the provisions for reservation of seats in state-run educational institutions and in state services of socially and educationally and other backward communities. The chapter goes on to examine certain time periods identified by its distinctive ideas and values of social policy arising from the surrounding social and political context – which became embodied in statutes and regulations or case law of that period – namely, the 1950s and 1960s (the Nehruvian era); the 1970s and 1980s (Indira Gandhi's era); and the 1990s onwards (coalition governments and neo-liberalism). Sen contends that, for decades, policy makers believed in limitations to the state's financial or institutional capacities. Only in the 1980s, the courts, in particular the Supreme Court of India, moved to accept welfare entitlements. In the 2000s, policy makers eventually also strengthened the idea of welfare entitlements, at first under a Congress-led coalition government, then under governments led by Narendra Modi.

Chapter 5 deals with social policies in South Africa. Letlhokwa George Mpedi analyses the social policies in colonial South Africa, apartheid South Africa, and post-apartheid South Africa. Like in India, social policies emerged already in colonial South Africa. However, Mpedi highlights that, in the era of colonial South Africa, social policy was primarily concerned with the land question, the race problem, and the 'poor White problem'. Black South Africans were dispossessed and marginalised. During the apartheid era, cleavages in social policies remained palpable, although (so-called) Black and Coloured

South Africans were eventually integrated into the regimes of social insurance and social grants, yet not on an equal footing. In post-apartheid South Africa, racial distinctions were eliminated, but legacies remained. The beneficiaries of the grants are still categorised (children, disabled persons, elderly), and the Constitutional Court's push for more encompassing social policies is rather soft.

Finally, Chapter 6 engages in comparisons, across the four countries and between the four countries and European social policies, in particular the social policies in Germany and Great Britain, as those two European countries represent the most important foreign models. Ulrike Davy concentrates on critical junctures, the emergence of social policies (conditions, perceptions, ideational frameworks), the trajectories chosen, and the role of the courts in pushing for new social policy concepts and dimensions. She also gives an account of the labour and social politics pursued by Brazil, China, India, and South Africa at International Labour Conferences at a time when social policies started to emerge at the domestic level, ie in the 1920s and 1930s, exploring the linkages between politics pursued at the ILO and home-made social politics. Davy argues that historically all four countries moved from a rather narrowly conceptualised 'social insurance' framework to a more encompassing regime of 'social security'. That move might, at first glance, resemble European pathways. However, so Davy contends, Southern idiosyncrasies prevailed in conceptualising the meaning of 'social security', when the term became prominent. In fact, the term epitomises core elements of Southern welfare and the aspirations of non-European countries in a post-colonial era.

Brazil's Social Policies Since the 1930s

From Fragmentation to Universalism

Octávio Luiz Motta Ferraz

Introduction

In this chapter my aim is to provide an account of the evolution of social policies in Brazil's legislation since the 1930s and to identify the main causes (in particular the motivational ideas) that led to the legal entrenchment of such policies. Any minimally comprehensive such account would of course require much more space than I have available, so it will be necessarily incomplete and limited in focus. It will hopefully still be useful as an entry point to this complex topic.

The main focus will be on social policies entrenched in the highest level of legislation in Brazil, ie its constitutions. This is, again, a limited focus, yet one that is in my view justified but in need of some explanation. Firstly, it is important to note that not all social policies in Brazil have a constitutional grounding. The most prominent example is the widely known and discussed conditional cash transfer programme called *Bolsa Família* ('The Family Grant').¹ Yet most of Brazil's most significant social policies since the 1930s have been included in the constitutional text, often when new constitutions were adopted (which happened at least five times since then)² so the constitution seems the natural place to focus on. Secondly, I of course do not hold the view that the mere adoption of laws, even constitutions, is sufficient to produce social change. But I equally reject a radical sceptical view that laws make no difference whatsoever in what happens in reality. The actual role and impact of laws in social change is an extremely complex and

1 At the end of 2021, the *Bolsa Família* programme was replaced by '*Auxílio Brasil*' ('Brazil Aid'), which is basically the same programme with a different name (mostly for political reasons, ie to try to delink the programme from the party that created it, the Workers' Party) and a few tweaks such as some extra benefits which are however still unclear and will not apply until further legislation and regulation is adopted in future. See Agência Brasil (Online, 2.12.2021), Senate approves provisional measure creating Brazil Aid. <<https://agenciabrasil.ebc.com.br/en/politica/noticia/2021-12/senate-approves-provisional-measure-creating-brazil-aid>> accessed 28 February 2022.

2 I say at least because experts disagree on whether the 1969 amendment to the 1967 Constitution was just an amendment or in fact a new constitution given the wide-ranging substantive changes it introduced. See José Afonso da Silva, *Curso de Direito Constitucional Positivo* (Editora Malheiros 2005) 132.